

EXHIBIT C

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13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION
16
17

18 12 LINDSEY ABRAMS, individually and on
19 13 behalf of a class of similarly situated
20 14 individuals,
21 15 Plaintiff,

Case No. 5:07-cv-05378 JF

22 16 DEFENDANT FACEBOOK, INC.'S
23 17 RESPONSE TO PLAINTIFF'S FIRST SET OF
24 18 INTERROGATORIES
25 19
26 20
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FACEBOOK, INC., a Delaware corporation,
Defendant.

PROPOUNDING PARTY: LINDSEY ABRAMS

RESPONDING PARTY: FACEBOOK, INC.

SET NUMBER: ONE

Pursuant to Federal Rule of Civil Procedure 33, Defendant Facebook, Inc. ("FACEBOOK") responds as follows to plaintiff's first set of interrogatories:

I. GENERAL RESPONSES.

1. FACEBOOK's response to plaintiff's first set of interrogatories is made to the best of FACEBOOK's present knowledge, information, and belief. Said response is at all times subject to such additional or different information that discovery or further investigation may disclose and, while based on the present state of FACEBOOK's recollection, is subject to such

1 refreshing of recollection, and such additional knowledge of facts, as may result from
 2 FACEBOOK's further discovery or investigation. FACEBOOK reserves the right to make any
 3 use of, or to introduce at any hearing and at trial, information and/or documents responsive to
 4 plaintiff's first set of interrogatories but discovered subsequent to the date of this response,
 5 including, but not limited to, any such information or documents obtained in discovery herein.

6 2. To the extent that FACEBOOK responds to plaintiff's interrogatories by stating
 7 that FACEBOOK will provide information and/or documents which FACEBOOK or any other
 8 party to this litigation deems to embody material that is private, business confidential, proprietary,
 9 trade secret, or otherwise protected from disclosure pursuant to Federal Rule of Civil Procedure
 10 26(c)(7), Federal Rule of Evidence 501, California Evidence Code section 1060, or California
 11 Constitution, article I, section 1, FACEBOOK will do so only upon the entry of an appropriate
 12 protective order against the unauthorized use or disclosure of such information.

13 3. FACEBOOK reserves all objections or other questions as to the competency,
 14 relevance, materiality, privilege or admissibility as evidence in any subsequent proceeding in or
 15 trial of this or any other action for any purpose whatsoever of FACEBOOK's responses herein
 16 and any document or thing identified or provided in response to plaintiff's interrogatories.

17 4. FACEBOOK reserves the right to object on any ground at any time to such other
 18 or supplemental interrogatories as plaintiff may at any time propound involving or relating to the
 19 subject matter of these interrogatories.

20 **II. GENERAL OBJECTIONS.**

21 FACEBOOK makes the following general objections, whether or not separately set forth
 22 in response to each interrogatory, instruction, and definition in plaintiff's first set of
 23 interrogatories:

24 1. FACEBOOK objects generally to the interrogatories insofar as any such
 25 interrogatory seeks information or production of documents protected by the attorney-client
 26 privilege or the work product doctrine. Such information or documents shall not be provided in
 27 response to plaintiff's interrogatories and any inadvertent disclosure or production thereof shall
 28

1 not be deemed a waiver of any privilege with respect to such information or documents or of any
 2 work product immunity which may attach thereto.

3 2. FACEBOOK objects to the prefatory Document Request, which applies to all the
 4 interrogatories, which seeks to require FACEBOOK to identify each document "used or relied
 5 upon to respond to any answer to the interrogatories" on the ground that any response thereto
 6 would require subjective judgment on the part of FACEBOOK and its attorneys, and would
 7 further require disclosure of a conclusion or opinion of counsel in violation of the attorney work
 8 product opinion.

9 3. FACEBOOK objects to the definitions "YOU" and "YOUR" and each
 10 interrogatory containing those terms as overbroad to the extent that it purports to define
 11 FACEBOOK to include more than the company and its officers, directors, agents, and employees.
 12 Without waiving these objections, FACEBOOK construes the terms "YOU" and "YOUR" to
 13 refer only to the company and its officers, directors, agents, and employees, and will respond to
 14 interrogatories containing that term accordingly.

15 4. FACEBOOK objects to the instruction related to the assertion of privilege to the
 16 extent it seeks to require FACEBOOK to identify anything other than the specific claim of
 17 privilege or work product being made and the grounds for such claim. The instruction would
 18 subject FACEBOOK to unreasonable and undue annoyance, oppression, burden and expense and
 19 seeks information protected from discovery by privilege and as work product.

20 5. FACEBOOK objects to all interrogatories to the extent they seek to require
 21 FACEBOOK to search for information about documents no longer in existence or in
 22 FACEBOOK'S possession, custody or control, on the grounds that said instruction is overly
 23 broad, would subject FACEBOOK to undue annoyance, oppression, burden and expense, and
 24 seeks to impose upon FACEBOOK an obligation to investigate information or materials from
 25 third parties or services who are equally accessible to plaintiff.

26 **III. SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES.**

27 Without waiving or limiting in any manner any of the foregoing General Objections, but
 28 rather incorporating them into each of the following responses to the extent applicable,

1 FACEBOOK responds to the specific interrogatories in plaintiff's first set of interrogatories as
 2 follows:

3 **INTERROGATORY NO. 1:**

4 Identify the person or persons answering these interrogatories, the position with you of
 5 each such person, and the person's duties. For each person so identified, specify each such
 6 interrogatory that that person assisted in answering.

7 **RESPONSE TO INTERROGATORY NO. 1:**

8 Subject to and without waiving the General and Specific Objections, FACEBOOK
 9 responds to this interrogatory as follows:

10 (1) Jed Stremel, Manager, Mobile Product Marketing; Interrogatory No. 6.
 11 (2) Ravi Grover—Data Analyst; Interrogatory Nos. 2, 3, 6, and 7.
 12 (3) Mark Howitson—Deputy General Counsel; Interrogatory No. 11.

13 **INTERROGATORY NO. 2:**

14 From the date Facebook Mobile was released through January 1, 2008, identify (a) the
 15 total number of telephone numbers to which a text message was sent through Facebook Mobile,
 16 (b) the average daily number of text messages sent through Facebook Mobile to such telephone
 17 numbers, (c) the total number of text messages sent through Facebook Mobile each month since
 18 Facebook Mobile was released. Describe the process by which you made these determinations.

19 **RESPONSE TO NO. 2:**

20 FACEBOOK objects to this interrogatory on the grounds that it is vague and ambiguous.
 21 FACEBOOK further objects to subpart (b) as redundant. Subject to and without waiving the
 22 General and Specific Objections, FACEBOOK responds to this interrogatory as follows:

23 (a) FACEBOOK further objects to this subpart because it imposes an undue burden on
 24 FACEBOOK to search through every text message transaction, and therefore is oppressive. As of
 25 February 4, 2008, Facebook Mobile had 1,783,315 registered users. Additionally, at least 57,396
 26 Facebook Mobile users have deactivated their telephone number from the Facebook Mobile

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28

1 service.¹ Most, if not all, of these deactivated users, likely received text messages from
 2 FACEBOOK. Accordingly, adding these two numbers together equals 1,840,711.

3 FACEBOOK recognizes that the sum of total number of registered users (1,783,315) as of
 4 February 4, 2008, and the verifiable number of deactivated Facebook Mobile users (57,396), does
 5 not answer the question of how many telephone numbers received a text message through
 6 Facebook Mobile. First, this number does not count many users who previously used Facebook
 7 Mobile but stopped prior to February 4, 2008. FACEBOOK does not maintain information from
 8 which they can determine how many telephone numbers fall into this category. Second, the total
 9 number of users only counts users, and some users have multiple telephone numbers registered
 10 with Facebook Mobile. Third, if a user switched telephone numbers at any point, they are still
 11 only counted as one individual user, even though they might have had multiple telephone
 12 numbers registered with FACEBOOK at various times. Fourth, not all registered users have
 13 necessarily received a text message.

14 Despite these limitations, FACEBOOK believes that the number 1,840,711 represents the
 15 closest possible estimate of telephone numbers that received a text message through Facebook
 16 Mobile, based on the information that is available to FACEBOOK after a reasonable search.

17 (b) FACEBOOK does not maintain this data.

18 (c)

MONTH	# SMS SENT
March 2006	2232*
April 2006	477,129
May 2006	1,687,007

24 ¹ FACEBOOK maintains a deactivation log, which contains the number of total users per month
 25 who either: (a) respond to a text message from FACEBOOK by writing back "STOP," "OFF,"
 26 "END," "CANCEL," and/or "QUIT"; and (b) have not received a text through Facebook Mobile
 27 in over 30 days; such Facebook Mobile users have their Facebook Mobile service discontinued
 28 until the owner requests that it be turned back on. *See Response to Interrogatory No. 6* for a more
 detailed explanation of both (a) and (b). The number 57,396 only encompasses users who
 deactivate from Facebook Mobile in these two particular ways. It is clear that other Facebook
 Mobile users have also deactivated from the service in other ways.

1	June 2006	4,205,488
2	July 2006	5,025,731
3	August 2006	6,560,405
4	September 2006	6,319,511
5	October 2006	10,538,395**
6	November 2006	11,597,865
7	December 2006	10,983,222
8	January 2007	14,013,017
9	February 2007	16,096,930
10	March 2007	17,483,017
11	April 2007	19,352,250
12	May 2007	25,156,925
13	June 2007	40,486,403
14	July 2007	46,569,165
15	August 2007	51,675,454
16	September 2007	49,630,152**
17	October 2007	49,813,496
18	November 2007	60,781,454
19	December 2007	50,331,171
20	January 2008	59,957,931

22 * Logging of text messages began on March 21, 2006.

23 ** Extrapolated based on partial month data due to missing data due to logging failures

24 **INTERROGATORY NO. 3:**

25 For each sub-part listed in Interrogatory Number 2, state how many of such text messages
 26 you estimate were sent to unintended recipients, including those who received "recycled
 27 numbers". Describe the process by which you made this determination.

1 **RESPONSE TO NO. 3:**

2 FACEBOOK objects to this interrogatory on the grounds that it is vague and ambiguous.
 3 FACEBOOK further objects to this interrogatory as unintelligible because it is impossible for
 4 FACEBOOK to know whether a recipient was "unintended." FACEBOOK further objects to this
 5 interrogatory as unintelligible because at bottom, every telephone number is a "recycled number."

6 Subject to and without waiving the General and Specific Objections, FACEBOOK
 7 responds to this interrogatory as follows: FACEBOOK is not able to know with certainty how
 8 many text messages have been sent to "unintended recipients."

9 FACEBOOK maintains a deactivation log, which contains the number of total users per
 10 month who either: (a) respond to a text message from FACEBOOK by writing back "STOP,"
 11 "OFF," "END," "CANCEL," and/or "QUIT"; and (b) have not received a text through Facebook
 12 Mobile in over 30 days; such Facebook Mobile users have their Facebook Mobile service
 13 discontinued until the owner requests that it be turned back on. *See* Response to Interrogatory
 14 No. 6 for a more detailed explanation of both (a) and (b).

15 The number of users who have deactivated from Facebook Mobile's services by the
 16 manners listed in (a) and (b) above, are listed below by month.

18	MONTH	# OF USERS WHO DEACTIVATED
20	March 2006	4*
21	April 2006	285
22	May 2006	1668
23	June 2006	2086
24	July 2006	1976
25	August 2006	2319
26	September 2006	1971
27	October 2006	2995

1	November 2006	2613
2	December 2006	1709
3	January 2007	2318
4	February 2007	1975
5	March 2007	2551
6	April 2007	2435
7	May 2007	2826
8	June 2007	4096
9	July 2007	3994
10	August 2007	4127
11	September 2007	3400**
12	October 2007	3015
13	November 2007	3282
14	December 2007	2837
15	January 2008	2914

17 * Logging of text messages began on March 21, 2006.

18 ** Extrapolated based on partial month data due to missing data due to logging failures.

19 However, simply taking the total number of users on the deactivation log is not an
20 accurate way to determine how many "unintended recipients" received text messages from
21 FACEBOOK. First, the deactivation log is not a comprehensive list of every user who has
22 deactivated their use of Facebook Mobile. It only registers users who have deactivated in two
23 discrete ways. It is obvious that other users have deactivated their use of Facebook Mobile in
24 other manners. Second, it is impossible to know why a user deactivated their telephone number
25 from Facebook Mobile. It is not logical to assume that every person who is on the deactivation
26 log deactivated because they were an "unintended recipient" of a text message. In fact, many of
27 the users who are on the deactivation log were deactivated because they DID NOT receive text
28 messages from Facebook Mobile for over thirty days.

1 At bottom, FACEBOOK is not able to know with certainty how many text messages have
 2 been sent to "unintended recipients," nor is it able to offer a reasonable estimate.

3 **INTERROGATORY NO. 4:**

4 Identify all third-party controlled applications ("Application" or "Application") that
 5 originate text messages sent through Facebook Mobile. Identify the third-parties that control each
 6 such Application and state whether Facebook maintains a Beneficial Interest, as that term is
 7 defined herein, in any such third-party. Identify the total number of text messages sent through
 8 Facebook Mobile by such Applications each month since Facebook Mobile was released to
 9 January 1, 2008. Describe the process by which you made these determinations.

10 **RESPONSE TO NO. 4:**

11 FACEBOOK objects to this interrogatory on the grounds that it is vague and ambiguous.
 12 FACEBOOK further objects to this interrogatory on the grounds that the term "Beneficial
 13 Interest" is vague, ambiguous, and unintelligible. Interpreting the term "Beneficial Interest" for
 14 purposes of responding to this interrogatory would require subjective judgment on the part of
 15 FACEBOOK'S attorneys and a conclusion or opinion of counsel in violation of the attorney work
 16 product doctrine. FACEBOOK further objects to this interrogatory on the grounds that the term
 17 "Application" is vague, ambiguous, and unintelligible. Interpreting the term "Application" for
 18 purposes of responding to this interrogatory would require subjective judgment on the part of
 19 FACEBOOK'S attorneys and a conclusion or opinion of counsel in violation of the attorney work
 20 product doctrine.

21 FACEBOOK further objects to this interrogatory as seeking irrelevant information that
 22 has no legitimate connection to any issue in this case and constitutes sensitive, confidential,
 23 proprietary and privileged information.

24 **INTERROGATORY NO. 5:**

25 For Interrogatory Numbers 2-5, including the respective sub-parts, please provide
 26 estimates of the number of such text messages that you expect will be sent to the respective
 27 recipients within the next two years. Describe the process by which you made this determination.

1 **RESPONSE TO NO. 5:**

2 FACEBOOK objects to this interrogatory on the grounds that it is vague and ambiguous.
 3 FACEBOOK further objects to this interrogatory as speculative. FACEBOOK further objects to
 4 this interrogatory on the grounds that it calls for an inadmissible hypothetical opinion.

5 **INTERROGATORY NO. 6:**

6 Identify with specificity the steps taken by Facebook prior to the filing of this lawsuit to
 7 prevent Facebook's transmission of unauthorized text messages.

8 **RESPONSE TO NO. 6:**

9 FACEBOOK objects to this interrogatory on the grounds that it is vague and ambiguous.
 10 FACEBOOK further objects to this interrogatory on the grounds that the term "unauthorized" is
 11 vague, ambiguous, argumentative, and unintelligible. FACEBOOK further objects to this
 12 interrogatory on the grounds that the term "steps" is vague, ambiguous, and unintelligible.

13 Subject to and without waiving the General and Specific Objections, FACEBOOK
 14 responds to this interrogatory as follows: FACEBOOK implemented a process with AT&T and
 15 Verizon whereby those companies would provide notice to FACEBOOK of the deactivation of
 16 mobile telephone numbers. Upon receipt of such notice, FACEBOOK would take action
 17 internally to stop messages from being sent to the mobile telephone numbers provided by AT&T
 18 and Verizon.

19 FACEBOOK implemented this process with AT&T around May, 2006. However, in late
 20 2006, a technical problem arose, and AT&T stopped providing such notice to FACEBOOK. This
 21 technical problem was corrected, and AT&T resumed giving FACEBOOK notice starting again
 22 in approximately October/November, 2007. FACEBOOK also implemented this process with
 23 Verizon in November, 2007. Unfortunately, other mobile telephone operators would not provide
 24 notice of deactivation of mobile telephone numbers to FACEBOOK.

25 FACEBOOK also supports and recognizes industry-standard opt-out commands such as
 26 "STOP," "OFF," "END," "CANCEL," and/or "QUIT." FACEBOOK also recognizes any of
 27 those words if they are followed with a space and more text—for example, "CANCEL SMS" or
 28 "STOP SENDING MESSAGES." Thus, by way of example, if a mobile telephone owner

1 receives an unwanted text message through FACEBOOK, they can respond to the message with
 2 the message “STOP” and/or “OFF” and FACEBOOK immediately discontinues such text
 3 messages.

4 Further, when FACEBOOK receives an error message in response to sending a text
 5 message to a particular telephone number (meaning the telephone number is no longer in service),
 6 FACEBOOK turns off FACEBOOK Mobile for that particular telephone number.

7 Additionally, if a Facebook Mobile user is inactive (meaning they do not receive a text
 8 message) for thirty (30) days, FACEBOOK sends a message to the mobile telephone owner
 9 stating: “You have not used Facebook texts in over 30 days. Notifications will be turned off. To
 10 continue receiving Facebook Mobile Texts, reply ‘ON’ to this message.” Upon FACEBOOK
 11 sending this message, text messages are not sent to the mobile telephone owner until the owner
 12 requests that they be turned back on.

13 FACEBOOK also supports any customer service requests made through carriers by
 14 mobile telephone owners, but FACEBOOK is not aware of ever receiving such a request.

15 FACEBOOK also maintains information on its website informing mobile telephone
 16 owners on how to stop receiving text messages from FACEBOOK. See
 17 <http://www.facebook.com/help.php?page=8>. For example, under the heading “How can I
 18 stop/start getting Facebook texts?”, it states: “Set Facebook texts to ‘on’ or ‘off’ by following the
 19 ‘Edit Preferences’ link on the Mobile page. Alternatively , just text ‘on’ or ‘off’ to FBOOK
 20 (32665).” Further, on that same help page, under the heading “Will Facebook ever spam my
 21 phone?”, it states: “No, Facebook will never send you any unsolicited texts.”

22 FACEBOOK is also in the midst of building a process by which all mobile telephone
 23 operators may identify deactivated customer telephone numbers to FACEBOOK. FACEBOOK
 24 hopes to launch this process in February 2008.

25 **INTERROGATORY NO. 7:**

26 Prior to the filing of this lawsuit, identify the percentage of the text messages sent through
 27 Facebook Mobile which (a) informed the recipient how to opt out of receiving future text
 28

1 messages and (b) contained language stating that the message was sent via Facebook. Please also
 2 identify any form messages you believe satisfies the criteria for either sub-part.

3 **RESPONSE TO NO. 7:**

4 Subject to and without waiving the General Objections, FACEBOOK responds to this
 5 interrogatory as follows:

6 (a) FACEBOOK disclosed on its website how to opt out of receiving text messages,
 7 FACEBOOK does not believe that it did so in the actual text messages that were sent through
 8 Facebook Mobile, which is understandable given the small number of individual characters that
 9 can be sent in text messages.

10 (b) It is FACEBOOK's understanding that most, if not all text messages sent through
 11 Facebook Mobile indicated that the message was being sent through FACEBOOK. Here are
 12 three different form messages, all of which contain language indicating they are from
 13 FACEBOOK:

- 14 (1) Confirmed! Text 'srch' followed by a name to FBOOK (32665) to search.
 15 'p' to poke, 'm' to msg, 'w' wall post (ie 'p john smith'). '@ msg' to set your
 16 status.
- 17 (2) {name} has requested to add you as a friend on Facebook. Reply 'a' to add,
 18 or 'info' to get profile. Reply to msg {name} back. [last sentence not
 19 included if that would put SMS over character limit]
- 20 (3) Facebook msg from {name}
 21 Subj: {subject}
 22 {message}

23 **INTERROGATORY NO. 8:**

24 To the extent that Facebook decided not to (a) inform recipients how to opt out of
 25 receiving future text message and/or (b) uniformly disclose that its text messages were connected
 26 to Facebook, identify the reasons for those decisions and any related documents. If one of the
 27 reasons was based on a concern that recipients might opt out of receiving future messages, please
 28 provide any estimates you made of the number of such recipients who would likely opt out. If
 one of the reasons was related to financial concerns, please provide any estimates of the costs
 associated with making such disclosures.

1 **RESPONSE TO NO. 8:**

2 FACEBOOK objects to this interrogatory on the grounds that it is vague and ambiguous.
 3 FACEBOOK further objects to this interrogatory on the grounds that it is argumentative, as it
 4 assumes that FACEBOOK made a conscious "decision" to take, or not take, certain actions.
 5 FACEBOOK further objects to this interrogatory on the grounds that it is argumentative, as it
 6 assumes that FACEBOOK had a duty to inform recipients how to opt out of receiving text
 7 messages or to identify that text messages are from FACEBOOK, which is a disputed fact.

8 Subject to and without waiving the General and Specific Objections, FACEBOOK
 9 responds to this interrogatory as follows: FACEBOOK disclosed on its website how to stop
 10 receiving text messages.

11 **INTERROGATORY NO. 9:**

12 Please explain whether and to what extent Facebook and/or its business partners
 13 generated, generate, or within the next two years are expected to generate, revenue through the
 14 transmissions of Facebook Mobile text messages and identify any related documents.

15 **RESPONSE TO NO. 9:**

16 FACEBOOK objects to this interrogatory on the grounds that it is vague and ambiguous.
 17 FACEBOOK further objects to this interrogatory as overly broad and as seeking information
 18 beyond the scope of permissible discovery to the extent it requests information on FACEBOOK'S
 19 business dealings with its "partners." FACEBOOK further objects to this interrogatory on the
 20 grounds that this information has no legitimate connection to any issue in this case and constitutes
 21 sensitive, confidential, proprietary, privileged, and trade secret information, the disclosure of
 22 which could severely damage FACEBOOK'S business.

23 **INTERROGATORY NO. 10:**

24 Please identify all documents and facts which you intend to rely upon, or provide to the
 25 Court, in opposing plaintiff's petition regarding attorneys' fees and an incentive award.

26 **RESPONSE TO NO. 10:**

27 FACEBOOK objects to this interrogatory on the grounds that it is premature.

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1 **INTERROGATORY NO. 11:**

2 Identify any other lawsuit or governmental action filed or threatened to be filed involving
 3 any of the issues raised in this litigation.

4 **RESPONSE TO NO. 11:**

5 Subject to and without waiving the General Objections, FACEBOOK responds to this
 6 interrogatory as follows: None.

7 **INTERROGATORY NO. 12:**

8 Please provide an estimate of the value of the benefits conveyed through the settlement of
 9 this litigation, describe the process by which you made this determination, and state all facts that
 10 you believe are relevant to making such an estimate.

11 **RESPONSE TO NO. 12:**

12 FACEBOOK objects to this interrogatory on the grounds that it is vague and ambiguous.
 13 FACEBOOK further objects to this interrogatory on the grounds that the term "benefits" is vague,
 14 ambiguous, and unintelligible. FACEBOOK further objects to this interrogatory on the grounds
 15 that responding to this interrogatory would require subjective judgment on the part of
 16 FACEBOOK'S attorneys and a conclusion or opinion of counsel in violation of the attorney work
 17 product doctrine. FACEBOOK further objects to this interrogatory on the grounds that it is
 18 improperly directed to FACEBOOK—it is up to the Court to determine the value of the benefits
 19 conveyed through the settlement of this litigation. FACEBOOK further objects to this
 20 interrogatory as speculative. FACEBOOK further objects to this interrogatory on the grounds
 21 that it calls for an inadmissible hypothetical opinion.

22

23 Dated: February 8, 2008

24 COOLEY GODWARD KRONISH LLP
 MICHAEL G. RHODES (116127)
 BENJAMIN F. CHAPMAN (234436)

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26 
 Michael G. Rhodes (116127)
 Attorneys for Defendant
 FACEBOOK, INC.

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VERIFICATION

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I, RAVI GROVER, declare:

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I have read Defendant Facebook, Inc.'s Response to Plaintiff's First set of Interrogatories, and know the contents thereof. The matters stated therein are true to the best of my information and belief and on that ground I declare under penalty of perjury under the laws of the State of California that the same are true and correct.

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Date: February 8, 2008



RAVI GROVER

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